The opinion in support of the decision being entered today is *not* binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS K. REUSCHE, DONALD B. OWEN, and JOE BLAHNIK

Appeal 2006-3101
Application 10/643,055
Technology Center 3600

Decided: September 4, 2007

Before: MURRIEL E. CRAWFORD, HUBERT C. LORIN and ANTON W. FETTING, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 1 to 12, 14 to 25, and 27 to 34. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented a water agitation system having an agitator with at least one agitation member outwardly extending from a lateral surface of the distal end of the drive shaft (Specification 1).

Claim 1 under appeal reads as follows:

1. A water agitation system configured to be positioned within a water retention structure configured to receive and retain water, said system comprising:

a main body positionable within a water retention area of the water retention structure, said main body comprising a base removably interconnected to a cover, and an inner compartment defined between said base and cover; and

an agitator operatively connected to a motor housed within said main body, said agitator connected to a distal end of a drive shaft that extends outwardly from said main body, said agitator comprising at least one *agitation member outwardly extending from a lateral surface of said distal end of said drive shaft*, said motor configured to rotate said agitator in order to stir water retained within the water retention structure, wherein said at least one agitation member is operable to stir the water within the water retention structure,

said motor being positioned within said inner compartment. (emphasis added.)

The Examiner rejected claims 1 to 5, 7, 8, 10, 12, 14 to 18, 20, 21, 23, 25, 27 to 30 and 33 under 35 U.S.C. § 102(b) as being anticipated by Kajisono

The Examiner rejected claims 6, 19 and 31 under 35 U.S.C. § 103 as being unpatentable over Kajisono in view of Official Notice.

The Examiner rejected claims 9, 22 and 32 under 35 U.S.C. § 103 as being unpatentable over Kajisono in view of Wright.

The Examiner rejected claims 11, 24 and 34 under 35 U.S.C. § 103 as being unpatentable over Kajisono in view of Earhart.

In Each of the rejections, the Examiner relies on Kajisono for disclosing a water agitation system including an agitation member outwardly extending from a lateral surface of a distal end of a drive shaft.

The prior art relied upon by the Examiner in rejecting the claims on appeal are:

Earhart	US 3,836,130	Sep. 17, 1974
Wright	US 4,166,086	Aug. 28, 1979
Kajisono	US 5,336,399	Aug. 9, 1994
Bengel	US 5,465,279	Nov. 7, 1995

Appellants contend that Kajisono does not disclose or suggest an agitation member outwardly extending from a lateral surface of the distal end of the drive shaft.

ISSUE

The only issue is whether Appellants have shown that the Examiner erred in finding that Kajisono discloses or suggests an agitation member outwardly extending from a lateral surface of the distal end of the drive shaft.

FINDINGS OF FACT

Kajisono discloses an apparatus for purifying and activating water which includes a drive shaft 30 having a capsule 32 attached at a distal end thereof (Kajisono, col. 3, ll. 31 to 33). The capsule 32 has apertures 31 and

impellers at an end thereof to cause increased negative pressure (Kajisono, col. 4, ll. 40 to 50; Figure 7). The impellers do not extend from the drive shaft 30 but from the capsule 32. In addition, the impellers do not extend from a lateral surface but rather extend from the end of the capsule 32.

DISCUSSION

We will not sustain any of the rejections of the Examiner because all of the rejections rely on Kajisono for the claim limitation of an agitation member outwardly extending from the lateral surface of the distal end of the drive shaft found lacking in the Kajisono reference (see Findings of Fact).

The decision of the Examiner is reversed.

REVERSED

JRG

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661